

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

**\*E-FILED - 5/8/07\***

In re ESS TECHNOLOGY, INC.  
SECURITIES LITIGATION

) Master File No. C-02-4497-RMW

)

) CLASS ACTION

)

This Document Relates To:

)

) STIPULATION AND [] ORDER

)

) PRELIMINARILY APPROVING

ALL ACTIONS.

)

) SETTLEMENT AND PROVIDING FOR

)

) NOTICE

1 WHEREAS, a class action is pending before the Court entitled *In re ESS Technology, Inc.*  
2 *Securities Litigation*, Master File No. C-02-4497-RMW (the “Litigation”);

3 WHEREAS, the Settling Parties submit herewith the Stipulation of Settlement and Release  
4 dated as of November 12, 2006 (the “Stipulation”), that has been entered into by the Lead Plaintiff  
5 and Defendants, setting forth the terms of the settlement of the Litigation;

6 THEREFORE, the Settling Parties, by and through their counsel, hereby stipulate as follows:

7 1. All defined terms contained herein shall have the same meanings as set forth in the  
8 Stipulation.

9 2. Pursuant to Federal Rule of Civil Procedure 23(e), the Settling Parties jointly request  
10 the Court to enter this order preliminarily approving the settlement of this Litigation, in accordance  
11 with the Stipulation which, together with the Exhibits annexed thereto and the Supplemental  
12 Agreement, sets forth the terms and conditions for a proposed settlement of the Litigation and for  
13 dismissal of the Litigation with prejudice upon the terms and conditions set forth therein.

DATED: April 30, 2007

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
WILLIAM S. LERACH  
JOY ANN BULL

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Counsel for Plaintiffs

I, Joy Ann Bull, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order Preliminarily Approving Settlement and Providing for Notice. In compliance with General Order 45, X.B., I hereby attest Meredith N. Landy has concurred in this filing.

DATED: April 30, 2007

O'MELVENY & MYERS LLP  
MEREDITH N. LANDY  
JOSHUA D. BAKER

s/ Meredith N. Landy  
MEREDITH N. LANDY

2765 Sand Hill Road  
Menlo Park, CA 94025  
Telephone: 650/473-2600  
650/473-2601 (fax)

Counsel for Defendants

\* \* \*

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court does hereby preliminarily approve the Stipulation and the settlement set forth therein, subject to further consideration at the Settlement Hearing described below.

2. A hearing (the "Settlement Hearing") shall be held before this Court on July 27, 2007, at 9:00 a.m., at 2112 Robert F. Peckham Federal Building and United States Courthouse, 280 South First Street, San Jose, California, to determine whether the proposed settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, just, reasonable and adequate to the Class and Defendants and should be approved by the Court; whether a Judgment as provided in ¶1.12 of the Stipulation should be entered herein; whether the proposed Plan of Allocation should be approved; to determine the amount of fees and expenses that should be awarded to plaintiff's counsel; and to determine the amount of expenses to be reimbursed to the Lead Plaintiff. The Court may adjourn the Settlement Hearing without further notice to Members of the Class.

3. The Court approves, as to form and content, the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), the Proof of Claim and Release form (the "Proof of STIPULATION AND [] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE - C-02-4497-RMW

1 Claim”), and Summary Notice for publication annexed as Exhibits A-1, A-2 and A-3 hereto and  
2 finds that the mailing and distribution of the Notice and publishing of the Summary Notice  
3 substantially in the manner and form set forth in ¶¶4 and 5 of this Order meet the requirements of  
4 Federal Rule of Civil Procedure 23 and due process, and is the best notice practicable under the  
5 circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

6 4. The firm of Gilardi & Co. LLC (“Claims Administrator”) is hereby appointed to  
7 supervise and administer the notice procedure as well as the processing of claims as more fully set  
8 forth below:

9 (a) Not later than June 5, 2007 (the “Notice Date”), Lead Counsel shall cause a  
10 copy of the Notice and the Proof of Claim, substantially in the forms annexed as Exhibits A-1 and A-  
11 2 hereto, to be mailed by first class mail to all Class Members who can be identified with reasonable  
12 effort;

13 (b) Not later than June 5, 2007, Lead Counsel shall cause the Summary Notice to  
14 be published once in *Investor’s Business Daily*; and

15 (c) At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel  
16 shall cause to be served on Defendants’ counsel and filed with the Court proof, by affidavit or  
17 declaration, of such mailing and publishing.

18 5. Nominees who purchased the publicly traded securities of ESST for the beneficial  
19 ownership of Class Members during the Class Period shall send the Notice and the Proof of Claim to  
20 all beneficial owners of such ESST securities within ten (10) days after receipt thereof, or send a list  
21 of the names and addresses of such beneficial owners to the Claims Administrator within ten (10)  
22 days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and  
23 Proof of Claim to such beneficial owners. Lead Counsel shall, if requested, reimburse banks,  
24 brokerage houses or other nominees solely for their reasonable out-of-pocket expenses incurred in  
25 providing notice to beneficial owners who are Class Members out of the Settlement Fund, which  
26 expenses would not have been incurred except for the sending of such Notice, subject to further  
27 order of this Court with respect to any dispute concerning such compensation.

1           6.       All Members of the Class shall be bound by all determinations and judgments in the  
2 Litigation concerning the settlement, whether favorable or unfavorable to the Class.

3           7.       Class Members who wish to participate in the settlement shall complete and submit  
4 Proof of Claim forms in accordance with the instructions contained therein. Unless the Court orders  
5 otherwise, all Proof of Claim forms must be submitted no later than ninety (90) days from the Notice  
6 Date. Any Class Member who does not timely submit a Proof of Claim within the time provided for,  
7 shall be barred from sharing in the distribution of the proceeds of the Settlement Fund, unless  
8 otherwise ordered by the Court. Notwithstanding the foregoing, Lead Counsel may, in their  
9 discretion, accept late-submitted claims for processing by the Claims Administrator so long as  
10 distribution of the Net Settlement Fund is not materially delayed thereby.

11          8.       Any Member of the Class may enter an appearance in the Litigation, at their own  
12 expense, individually or through counsel of their own choice. If they do not enter an appearance,  
13 they will be represented by Lead Counsel.

14          9.       Any Person falling within the definition of the Class may, upon request, be excluded  
15 from the Class. Any such Person must submit to the Claims Administrator a request for exclusion  
16 ("Request for Exclusion"), postmarked no later than July 16, 2007. A Request for Exclusion must  
17 state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) each of  
18 the Person's purchases and sales of ESST publicly traded securities made during the Class Period,  
19 including the dates of purchase or sale, the number of shares purchased and/or sold, and the price  
20 paid or received per share for each such purchase or sale; and (c) that the Person wishes to be  
21 excluded from the Class. All Persons who submit valid and timely Requests for Exclusion in the  
22 manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the  
23 distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or the Judgment  
24 entered in the Litigation.

25          10.      Any Member of the Class may appear and show cause, if he, she or it has any, why  
26 the proposed settlement of the Litigation should or should not be approved as fair, reasonable and  
27 adequate or why a judgment should or should not be entered thereon. Any Member of the Class may  
28 appear and show cause, if he, she or it has any, why the Plan of Allocation should or should not be  
STIPULATION AND [] ORDER PRELIMINARILY APPROVING SETTLEMENT AND  
PROVIDING FOR NOTICE - C-02-4497-RMW

1 approved, why attorneys' fees and expenses should or should not be awarded to counsel for the Lead  
2 Plaintiff, or why the expenses of the Lead Plaintiff should or should not be awarded. However, no  
3 Class Member or any other Person shall be heard or entitled to contest such matters, unless that  
4 Person has delivered by hand or sent by first class mail written objections and copies of any papers  
5 and briefs such that they are received on or before July 16, 2007, by Lerach Coughlin Stoia Geller  
6 Rudman & Robbins LLP, Joy Ann Bull, 655 W. Broadway, Suite 1900, San Diego, CA, 92101 and  
7 O'Melveny & Myers LLP, Joshua D. Baker, 2765 Sand Hill Road, Menlo Park, CA 94025, and filed  
8 said objections, papers and briefs with the Clerk of the United States District Court for the Northern  
9 District of California, on or before July 16, 2007. Any Member of the Class who does not make his,  
10 her or its objection in the manner provided above shall be deemed to have waived such objection and  
11 shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed  
12 settlement as set forth in the Stipulation, to the Plan of Allocation, or to the award of attorneys' fees  
13 and expenses to counsel for the Lead Plaintiff or expenses of the Lead Plaintiff, unless otherwise  
14 ordered by the Court.

15 11. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia*  
16 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such  
17 funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

18 12. All papers in support of the settlement, the Plan of Allocation, and any application by  
19 counsel for the Lead Plaintiff for attorneys' fees or reimbursement of expenses or by the Lead  
20 Plaintiff for reimbursement of his expenses shall be filed and served seven (7) calendar days prior to  
21 the Settlement Hearing.

22 13. Neither Defendants and their Related Parties nor Defendants' counsel shall have any  
23 responsibility for the Plan of Allocation or any application for attorneys' fees or reimbursement of  
24 expenses submitted by counsel for Lead Plaintiff or the Lead Plaintiff, and such matters will be  
25 considered separately from the fairness, reasonableness and adequacy of the settlement.

26 14. At or after the Settlement Hearing, the Court shall determine whether the Plan of  
27 Allocation proposed by Lead Counsel, and any application for attorneys' fees or reimbursement of  
28 expenses shall be approved.

1           15. All reasonable expenses incurred in identifying and notifying Class Members, as well  
2 as administering the Settlement Fund, shall be paid as set forth in the Stipulation. In the event the  
3 settlement is not approved by the Court, or otherwise fails to become effective, neither the Lead  
4 Plaintiff nor any of his counsel shall have any obligation to repay any amounts incurred or properly  
5 disbursed pursuant to ¶¶2.6 or 3.1 of the Stipulation.

6           16. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations  
7 or proceedings connected with it, shall be construed as an admission or concession by Defendants of  
8 the truth of any of the allegations in the Litigation, or of any liability, fault, or wrongdoing of any  
9 kind.

10           17. The Court reserves the right to adjourn the date of the Settlement Hearing without  
11 further notice to the Members of the Class and retains jurisdiction to consider all further applications  
12 arising out of or connected with the proposed settlement. The Court may approve the settlement,  
13 with such modifications as may be agreed to by the Settling Parties, if appropriate, without further  
14 notice to the Class.

15           IT IS SO ORDERED.

16  
17 DATED: 5/4/07

  
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THE HONORABLE RONALD M. WHYTE  
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I further certify that I caused this document to be forwarded to the following designated Internet site at: <http://securities.lerachlaw.com/>.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 30, 2007.

s/ Joy Ann Bull  
JOY ANN BULL

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## Manual Notice List

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